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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

JEAN KATHLEEN SEIGLER,
etc.,

Plaintiff and Appellant,

v.

NORTH LOS ANGELES
COUNTY REGIONAL
CENTER,

Defendant and Respondent.

B286744

(Los Angeles County
Super. Ct. No. LC105100)

APPEAL from an order of the Superior Court of Los Angeles County, Huey P. Cotton, Judge. Affirmed.

Irvin Seigler, in pro. per., for Plaintiff and Appellant.

Soltman, Levitt, Flaherty & Wattles, and Philip E. Black,
for Defendant and Respondent.

North Los Angeles County Regional Center (Center) notified Irvin and Betty Seigler, along with their adult disabled daughter Jean K. Seigler, that it intended to terminate “supported living services” furnished to Jean.¹ Although this intent was overruled through an administrative appeal process before it ever took effect, Irvin brought an action on behalf of Jean against the Center alleging breach of fiduciary duty and intentional and negligent infliction of emotional distress, claiming the uncertainty caused by the possibility services might terminate caused compensable damage. The trial court sustained the Center’s demurrer to those claims without leave to amend.

The devotion of Irvin and Betty to their daughter and their efforts to ensure her the best available care are laudable. To the extent the Seigler family suffered from any uncertainty regarding the continuation of Jean’s services, we sympathize. But there are many wrongs in life for which existing law and precedent provide no legal remedy. (See *The MEGA Life & Health Ins. Co. v. Superior Court* (2009) 172 Cal.App.4th 1522, 1527-1528.) The uncertainty asserted here is among them. We accordingly affirm.

FACTUAL BACKGROUND

When considering an appeal from an order sustaining a demurrer without leave to amend, “[w]e accept as true all properly pleaded material factual allegations of the complaint and other relevant matters . . . properly the subject of judicial notice,” and liberally construe the complaint’s factual allegations “with a view to substantial justice between the parties.” (*Glen*

¹ We refer to the Seiglers by their first names not out of disrespect but for ease of reference and clarity.

Oaks Estates Homeowners Assn. v. Re/Max Premier Properties, Inc. (2012) 203 Cal.App.4th 913, 919.) “We do not, however, assume the truth of contentions, deductions,” or legal conclusions. (*Stearn v. County of San Bernardino* (2009) 170 Cal.App.4th 434, 440.)

According to the operative second amended complaint, Jean is the adult daughter of Irvin and Betty.² Jean has been diagnosed with autism and epilepsy, is intellectually disabled and nonverbal, and requires 24-hour care and assistance with daily activities. Irvin and Betty are in their 80’s, require assistance for their own needs, and do not provide care for Jean. Accordingly, the Center has funded Jean’s supported living services since 2002.

Irvin and Betty purchased a home for Jean where she currently resides. In 2008, Irvin and Betty experienced financial difficulties and moved into Jean’s home. On March 30, 2015, the Center sent Irvin and Betty a notice of proposed termination of funding for Jean’s supported living services, stating the Center was precluded by title 17, section 58613 of the California Code of Regulations from continuing to fund services because Jean was no longer “residing independently; parents have been living with [her] in her home and no longer meets criteria for [supported living services].” Irvin filed a fair hearing request seeking continued funding. The Center continued to fund Jean’s care

² Irvin failed to include the second amended complaint in the appellate record. We take judicial notice of the second amended complaint as a record of the trial court to enable us to adjudicate this appeal on the merits. Prior to argument, we notified the parties of our intention to do so, and permitted them to further augment the record as they believed appropriate.

throughout the administrative proceeding, and no party claims there was ever a gap in funding or services during this administrative process. At the hearing, an administrative law judge overruled the Center's proposed decision and ordered continued funding for Jean's supported living services.

PROCEDURAL BACKGROUND

Irvin and Betty (individually and as purported guardians ad litem for Jean) filed a complaint against the Center in December 2016, alleging claims for breach of fiduciary duty, intentional and negligent emotional infliction of emotional distress, and vicarious liability related to the proposed but never consummated termination of services. The Center filed a motion to strike the complaint, arguing Irvin and Betty could not represent Jean and were not Jean's guardian ad litem (GAL). The Center also separately demurred to the complaint. The demurrer argued the complaint failed to establish a fiduciary relationship between the Center and Jean's parents or that the Center owed Jean's parents any duty of care, and that persistent fear was legally insufficient to state a cause of action for emotional distress damages. Along with their opposition to the demurrer and motion to strike, plaintiffs filed a first amended complaint and an application for Irvin to be appointed as Jean's GAL.

In ruling on the demurrer and motion to strike, the court found the first amended complaint did not supersede the complaint because it was untimely filed without leave of court. (Code. Civ. Proc., § 472, subd. (a).) The court held the original complaint insufficient because it did not establish the Center owed Irvin or Betty a duty of care, and the only damages alleged

involved Irvin and Betty and not Jean. The court accordingly sustained the demurrer with leave to amend, granted the motion to strike the complaint with regard to Irvin and Betty's purported representation of Jean, and further struck the first amended complaint as it did not cure the identified problems with the complaint.

After the court granted Irvin's GAL application, Irvin filed a second amended complaint, listing the plaintiff as Jean by and through her GAL Irvin.³ The second amended complaint alleged three causes of action: breach of fiduciary duty, intentional infliction of emotional distress, and negligent infliction of emotional distress. The Center again demurred and moved to strike. The court found Irvin was still attempting to bring claims on behalf of Jean, could not appear on her behalf because he was not a lawyer, and accordingly struck Jean's claims.

As it was unclear if Irvin was also bringing claims individually, the court separately considered whether Irvin had stated a claim individually. The court found no basis upon which to infer a fiduciary relationship between the Center and Irvin, since the Center was rendering services to Jean and not Irvin. On the emotional distress claims, the court found nothing extreme or outrageous in the Center's alleged conduct, which involved interpreting regulations about whether Jean was still living independently after her parents moved in with her. The court noted that while an administrative law judge ultimately deemed the Center's interpretation incorrect, that fact was not

³ Betty was not listed as a plaintiff in the second amended complaint and is not a party to this appeal.

sufficient to support a claim for intentional infliction of emotional distress. With regard to the negligence claim, the court found there were no allegations indicating a duty of care between the Center and Irvin, and no identified harm other than fear that the Seiglers' living circumstances might change during the period between the proposed notice terminating funding and the decision on the administrative appeal. The court sustained the demurrer without leave to amend and entered an order of dismissal.

Irvin filed a timely notice of appeal, listing only himself as a party and not Jean.

DISCUSSION

A. Standard of Review

On appeal from an order dismissing an action after sustaining a demurrer without leave to amend, the standard of review is well settled. “[W]e review the complaint de novo to determine whether it alleges facts stating a cause of action under any legal theory.” (*Tom Jones Enterprises, Ltd. v. County of Los Angeles* (2013) 212 Cal.App.4th 1283, 1290.) “We give the complaint a reasonable interpretation, reading it as a whole and its parts in their context.” (*City of Dinuba v. County of Tulare* (2007) 41 Cal.4th 859, 865 (*City of Dinuba*).) The order of dismissal must be affirmed if any one of the several grounds of demurrer is well taken. (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 967.)

When a demurrer is sustained without leave to amend, we look to see “whether there is a reasonable possibility that the defect can be cured by amendment.” (*City of Dinuba, supra*, 41 Cal.4th at p. 865.) “[I]f it can be, the trial court has abused its

discretion and we reverse; if not, there has been no abuse of discretion and we affirm. [Citations.] The burden of proving such reasonable possibility is squarely on the plaintiff.” (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

B. The Trial Correctly Held Irvin Did Not Sufficiently Allege a Duty Owed by the Center to Irvin

Jean is being provided benefits by the State, administered through the Center, pursuant to the Lanterman Developmental Disability Services Act (Lanterman Act), Welfare and Institutions Code, section 4500 et seq. Irvin asserts the introductory language of the Lanterman Act refers to persons with developmental disabilities as well as their families. (E.g., Welf. & Inst. Code, § 4640.7, subd. (a) [“It is the intent of the Legislature that regional centers assist persons with developmental disabilities and their families in securing those services and supports which maximize opportunities and choices for living, working, learning, and recreating in the community.”].) Irvin argues this language establishes the Center owed a legal duty to Jean’s parents, and the trial court therefore erred in sustaining the demurrer and the motion to strike.

We reject this claim. Irvin cites no authority other than this prefatory language for his claim of legal duty, nor directs us to any statutory provision actually setting forth a duty of care relevant to his fiduciary duty and emotional distress claims. Explanatory language of the Lanterman Act’s intent to assist a party like Jean as well as her family members does not, without more, impose on the Center a fiduciary duty, or duty of care for purposes of a negligence claim, towards a family member such as Irvin. (*City of Hope National Medical Center v. Genentech, Inc.*

(2008) 43 Cal.4th 375, 386 [“Before a person can be charged with a fiduciary obligation, he must either knowingly undertake to act on behalf and for the benefit of another, or must enter into a relationship which imposes that undertaking as a matter of law.”]; *Potter v. Firestone Tire & Rubber Co.* (1993) 6 Cal.4th 965, 985 [duty of care for negligent infliction of emotional distress exists only when it is imposed by law, assumed by the defendant, or exists by virtue of a special relationship] (*Potter*).⁴

C. Irvin Has Waived Any Other Claim of Error

Other than his reference to the Lanterman Act’s prefatory language, Irvin does not otherwise discuss the trial court’s ruling, or make any other discernable challenge to it.⁵ A “trial court judgment is ordinarily presumed to be correct and the burden is on the appellant to demonstrate, on the basis of the record presented to the appellate court, that the trial court committed an error that justifies reversal of the judgment.” (*Jameson v.*

⁴ We further note the second amended complaint does not identify the purported breach of whatever duty Irvin claims the Center owed him, which is another required element of any breach of fiduciary duty or negligence claim. (E.g., *Tribeca Companies, LLC v. First American Title Ins. Company* (2015) 239 Cal.App.4th 1088, 1114.)

⁵ While Irvin’s reply brief does raise some additional arguments of error, we will not consider points raised for the first time in a reply brief. (*Cox v. Bonni* (2018) 30 Cal.App.5th 287, 311 [“appellant’s failure to raise an argument in the opening brief waives the issue on appeal.”].) Even if we were inclined to address these additional contentions, which largely center on whether Irvin can represent Jean in this proceeding, we would find them to be without merit for the reasons discussed elsewhere in this opinion.

Desta (2018) 5 Cal.5th 594, 609.) Irvin has not identified any other errors, and we are not required to search the record independently for them. (*Young v. Fish & Game Com.* (2018) 24 Cal.App.5th 1178, 1190.) Because Irvin has not made any other arguments of error, he has waived any further claims to review of the court's order. (*Id.* at pp. 1190–1191.)

Even if we were to independently review the second amended complaint and the court's rulings sustaining the demurrer and motion to strike, we see no error. A GAL's duties are limited, and include the right to make decisions incidental to the litigation (for example, overseeing an attorney representing the ward, and consenting to stipulations or a settlement the GAL considers to be in the ward's interest). (Code Civ. Proc., § 372, subd. (a)(1); *In re Josiah Z.* (2005) 36 Cal.4th 664, 678; *Safai v. Safai* (2008) 164 Cal.App.4th 233, 245.) That right to make decisions does not extend, however, to practicing law on behalf of the ward which is what Irvin sought to do in litigating Jean's claims. "[N]either the common law nor guardianship statutes sanction an exception to the State Bar Act prohibition against the unauthorized practice of law in favor of guardians acting for their wards." (*J.W. v. Superior Court* (1993) 17 Cal.App.4th 958, 968; see also Bus. & Prof. Code, § 6125.) Accordingly, the trial court did not err in striking claims Irvin improperly sought to litigate on Jean's behalf. (Code Civ. Proc., § 436, subd. (b).)

With regard to the intentional infliction of emotional distress claim, Irvin indicated at oral argument that he was no longer pursuing such a claim. Even if he was, the law requires that a plaintiff demonstrate outrageous conduct, and "[i]n order to avoid a demurrer, the plaintiff must allege with 'great[] specificity' the acts which he or she believes are so extreme as to

exceed all bounds of that usually tolerated in a civilized community.” (*Vasquez v. Franklin Management Real Estate Fund, Inc.* (2013) 222 Cal.App.4th 819, 832.) As the trial court noted, the fact an organization’s initial interpretation of governing regulations was overruled by an administrative law judge does not meet that test. Irvin also failed to allege any legally cognizable emotional distress damages. The second amended complaint asserted that “[f]rom the time the family received the letter proposing cutting funding for Jean’s care to the actual decision related to the appeal, the Seigler’s [sic] have lived in constant fear that they would be homeless and guilt that their daughter would not be properly cared for in the future.” However, the mental uncertainty that may exist when utilizing an administrative appeals process is not cognizable damage—particularly when the defendant continued to fund Jean’s services during the administrative proceeding, and there was no gap in such funding. (E.g., *Potter, supra*, 6 Cal.4th at p. 989, fn. 12 [plaintiff may only recover for emotional distress that is serious, meaning a reasonable person would be unable to adequately cope with the mental stress engendered by the circumstances of the case].)

Nor do we see an abuse of discretion in denying Irvin leave to amend. The burden of proving a reasonable possibility that the complaint’s deficiencies can be cured rests with plaintiff. (*Blank v. Kirwan, supra*, 39 Cal.3d at p. 318.) Here, Irvin had three opportunities to state a claim, fully aware that his two prior attempts were deficient in the eyes of the trial court. As Irvin has not stated any alternative allegations sufficient to cure the defects in his claims, and none is apparent given the nature of the claims and the relief sought, it was not an abuse of discretion

to deny further leave to amend. (*Michael Leslie Productions, Inc. v. City of Los Angeles* (2012) 207 Cal.App.4th 1011, 1027.)

DISPOSITION

The order of dismissal is affirmed. Respondent is entitled to recover its costs on appeal.

NOT TO BE PUBLISHED

WEINGART, J.*

We concur:

JOHNSON, Acting P. J.

BENDIX, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6, of the California Constitution.